

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

MAGNOLIA MARINE  
TRANSPORT COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO. 5:06-cv-150 (DCB) (JMR)

WILLIAM E. WICKER, JR.

DEFENDANT

ORDER

This cause is before the Court on the defendant William E. Wicker, Jr. ("Wicker")'s motion to dismiss **(docket entry 3)**. Having carefully considered the motion and response, the memoranda and the applicable law, and being otherwise fully advised in the premises, the Court finds as follows:

The plaintiff, Magnolia Marine Transport Company ("Magnolia"), filed this declaratory judgment action seeking an adjudication that it does not owe maintenance and cure to the defendant under the Admiralty and General Maritime Law. Wicker filed a motion to dismiss, claiming that Magnolia's suit was preemptive in nature and that it deprived Wicker of his right to choose the forum in which to litigate his claims against Magnolia.

Wicker has since amended his answer to bring his Jones Act claim in this Court. See Defendant's Unopposed Motion for Leave to File His First Amended Answer and Counterclaim, ¶ II(B) ("Defendant has a legitimate Jones Act claim against Plaintiff that it [sic] could have asserted in either state or federal court. Defendant has elected to pursue his claims for negligence and unseaworthiness

in this Court.").

Because Wicker is no longer asserting his right to bring his claims in a different forum, and he is not prejudiced by Magnolia filing its declaratory judgment action, the Court finds that Wicker's motion to dismiss should be denied. Accordingly,

IT IS HEREBY ORDERED that the defendant William E. Wicker, Jr.'s motion to dismiss (**docket entry 3**) is DENIED.

SO ORDERED, this the 25<sup>th</sup> day of September, 2007.

s/ David Bramlette  
UNITED STATES DISTRICT JUDGE